

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 3, 4, 6, 9 and 10 are pending in the application, with claim 1 being the independent claim. No new matter has been introduced.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 103***

The rejection of claims 1, 3-4 and 9-10 under 35 U.S.C. § 103(a) as obvious over Dutzmann *et al.*, *British Crop Protection Council Conference - Pests & Diseases* 1:365-370 (2002) ("Dutzmann") in view of Warrington, WO 03/037084 ("Warrington") and U.S. 5,279,766 ("Dahms") is respectfully traversed.

The Office states that Dutzmann teaches that fluoxastrobin is a leaf-systemic broad-spectrum fungicide. The Office also states that Dutzmann teaches that mixtures of fluoxastrobin with selected fungicides, such as prothioconazole, often result in an increased biological activity against these diseases. The Office acknowledges that Dutzmann does not teach a formulation of fluoxastrobin with  $\gamma$ -butyrolactone and at least one ethylene diamine alkoxylate. Warrington is cited for teaching a concentrated pesticidal solution that is comprised of one or more water-insoluble pesticides and lignin dissolved in a water miscible, polar solvent. One of the preferred solvents includes  $\gamma$ -butyrolactone.

Neither Dutzmann nor Warrington provide a rationale for combining fluoxastrobin with  $\gamma$ -butyrolactone and ethylene diamine alkoxylate. The Office has argued that the claim language is open and therefore arguments regarding the mandatory presence of lignin in the compositions of Warrington were not found relevant. Applicants respectfully submit that the Office is in error because the mandatory presence of lignin in Warrington's compositions speaks to the rationale to combine Dutzmann and Warrington to arrive at the claimed invention. Warrington teaches concentrated pesticidal solutions that comprise one or more water-soluble pesticides and lignin. The solvent  $\gamma$ -butyrolactone is cited by Warrington as being suitable because it is a water miscible polar solvent that can dissolve both the pesticide and lignin. Warrington does not provide a rationale to combine fluoxastrobin and  $\gamma$ -butyrolactone and certainly does not provide a rationale to combine fluoxastrobin and  $\gamma$ -butyrolactone along with ethylene diamine alkoxylate. Accordingly, neither Dutzmann nor Warrington provide a rationale to (a) swap one of the strobilurins named in the Warrington for fluoxastrobin or (b) combine fluoxastrobin with  $\gamma$ -butyrolactone.

Dahms is cited by the Office as teaching compositions that have surfactant properties and as teaching emulsions and dispersions that contain such compositions, including agrochemical formulations. It is respectfully submitted that contrary to the Office's assertion, Dahms does not teach using ethylene diamine alkoxylate in agrochemical formulations.

Dahms teaches a composition that is the **reaction product** of an (1) ethylene diamine alkoxylate, (2) pentaerythritol or glycerol, (3) phthalic acid and/or phthalic anhydride and (4) linoleic acid. (Dahms, col. 6, lines 31-40). Dahms explains that these

compositions can be obtained by the reaction of the above components under esterification conditions (Dahms, col. 6, lines 59-62); that all of the components can be mixed together and reacted in a single step; and the *reaction product* is useful to prepare emulsions or dispersions of solids in liquids. (Dahms, e.g., Abstract). Thus, Dahms does not teach using ethylene diamine alkoxylate in an agrochemical formulation. Rather, ethylene diamine alkoxylate is one of the reactants in an esterification reaction. Ethylene diamine alkoxylate is therefore reacted with other components and is presumably not present in the final reaction product.

The rejection of claim 6 under 35 U.S.C. § 103(a) as being obvious over Dutzmann in view of Warrington and Dahms and further in view of U.S. 6,277,856 ("Cotter") is respectfully traversed.

Claim 6 depends from claims 1 or 3 and therefore incorporates each and every limitation of claims 1 or 3. For the reasons discussed above with respect to the rejection of claims 1, 3-4 and 9-10 under 35 U.S.C. § 103(a), the rejection of claim 6 is respectfully traversed. Cotter does not cure the deficiencies of Dutzmann, Warrington or Dahms. Cotter provides no rationale for a formulation comprising fluoxastrobin,  $\gamma$ -butyrolactone, at least one ethylene diamine alkoxylate and trifloxystrobin. Examples 27-31, cols. 20-22 do not teach or provide a rationale for substituting the components in those mixtures with fluoxastrobin and at least one ethylene diamine alkoxylate.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Cynthia M. Bouchez", with a long, sweeping horizontal flourish extending to the right.

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